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Federal Communications Commission

DA 99-1851

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DISP

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Elaine, Arkansas))	MM Docket No. 99-280 ✓
)	RM-9672
)	
(Ringgold, Louisiana))	MM Docket No. 99-281
)	RM-9684
)	
(Littlefield, Arizona))	MM Docket No. 99-282
)	RM-9710
)	
(Hays, Kansas))	MM Docket No. 99-283
)	RM-9711

NOTICE OF PROPOSED RULE MAKING

Adopted: September 1, 1999

Released: September 10, 1999

Comment Date: November 1, 1999

Reply Comment Date: November 16, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by

avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

(1) MM Docket No. 99-280, RM-9672

Petitioner: Phillips County Broadcasting

Allan G. Moskowitz, Esq.
Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, DC 20005

Proposal: Allot Channel 238A to Elaine, Arkansas, an incorporated community, as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Elaine, Arkansas	--	238A

Coordinates: 34-22-52 NL; 90-45-56 WL

Additional Information: This proposal requires a site restriction 11.3 kilometers (7.0 miles) northeast of the community to avoid short spacings to Station WOHT(FM), Channel 237A, Drew, Mississippi, at coordinates 33-44-17 NL; 90-39-29 WL, as well as to Station KSSN(FM), Channel 239C, Little Rock, Arkansas, at coordinates 34-47-57 NL; 92-29-29 WL.

FCC Contact: Nancy Joyner, (202) 418-2180

(2) MM Docket No. 99-281, RM-9684

Petitioner: Black Lake Broadcasting

Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W., Suite 900
Washington, DC 20036-4192

Proposal: Allot Channel 253C3 to Ringgold, Louisiana, an incorporated community, as its first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Ringgold, Louisiana	--	253C3

Coordinates: 32-19-49 NL; 93-12-33 WL

Additional Information: The proposed allotment requires a site restriction 6.8 kilometers (4.2 miles) east of the community to avoid short spacings to Station KTAL-FM, Channel 251C, Texarkana, Texas, at coordinates 32-54-11 NL; 94-00-22 WL, and to Station KTUX(FM), Channel 255C1, Carthage, Texas, at coordinates 32-23-19 NL; 94-01-10 WL.

FCC Contact: Nancy Joyner (202) 418-2180

(3) MM Docket No. 99-282, RM-9710

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 265C to Littlefield, Arizona, as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Littlefield, Arizona	--	265C

Coordinates: 36-52-59 NL; 114-33-13 WL

Additional Information: This proposal requires a site restriction 55.6 kilometers (34.5 miles) west of the community. Additionally, Littlefield is not incorporated nor listed in the U.S. Census. In such instances the proponent must demonstrate its community status. This may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987); aff'd, 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd, 10 FCC Rcd 9831 (1995). Other examples of objective indications of community status include

receipts from local businesses, photographs of local churches and/or schools. Another indication of community status is whether the residents function as and conceive of themselves as residents of a community around which their interests coalesce. See Mighty-Mac Broadcasting Co., 58 RR 2d 599, 603 (1985); North Naples, Florida, 41 RR 2d 1549 (1977). In this instance, petitioner states that Littlefield contains a population of 200 persons according to the 1998 Rand McNally Road Map, and mentions that it contains many retail businesses as it is located on a congested interstate leading to Las Vegas. Additionally, petitioner reports that Littlefield is located at the entrance to the Paiute Wilderness area as well as the Beaver Dam Mountains Wilderness Area. According to the petitioner the allotment of Channel 265C to Littlefield would provide that locality with an outlet for local self expression and would provide a local communications outlet to warn the Littlefield area of emergency conditions caused by severe weather or other health hazards.

We note that the 1998 Rand McNally Commercial Atlas and Marketing Guide attributes Littlefield with a post office, zip code (86432) and a population of 100 persons. However, those few attributes are not sufficient to establish community status. See Coker, Alabama, 43 RR 2d 190, 193 (1978). Petitioner did not provide documented evidence to identify the community attributes it associates with Littlefield or shown that they are intended to serve Littlefield as opposed to other areas. Therefore, petitioner and other interested parties filing comments on this proposal are requested to present the Commission with specific information regarding the attributes of Littlefield, Arizona, consistent with the guidelines set forth above. Failure to provide the specific information requested will result in a denial of the proposal.

FCC Contact: Nancy Joyner, (202) 418-2180

(4) MM Docket No. 99-283, RM-9711

Petitioner: Gatoradio Media Group, Inc.

Naomi S. Travers, Esq.
Arter & Hadden, LLP
1801 K Street, N.W., Suite 400K
Washington, DC 20006-1301

Proposal: Allot Channel 289C2 to Hays, Kansas, as that community's third local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Hays, Kansas	258C1, 277C	258C1, 277C, 289C2

Coordinates: 38-57-15 NL; 99-26-43 WL

Additional Information: This proposal requires a site restriction 13.5 kilometers (8.4 mile) northwest of the community to avoid short-spacing to the licensed site of Station KVSF-FM, Channel 288C2, Beloit, Kansas, at coordinates 39-28-09 NL and 98-05-37 WL, and to the authorized site of Station KSSA(FM), Channel 290C1, Ingalls, Kansas, at coordinates 37-46-48 NL and 100-27-36 WL.

FCC Contact: Nancy Joyner, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before November 1, 1999, and reply comments on or before November 16, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the

comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center Room CY-A257) at its headquarters, 445 Twelfth Street, SW., Washington, D.C.